DRN-3845290

The complaint

Mr A complains about the advice given by Portal Financial Services LLP ('Portal') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

Mr A is being represented by a third party but for ease of reading this decision I'll largely refer to representations as being made by Mr A.

What happened

Mr A says he was offered a no obligation pension review with an independent financial adviser by a marketing company. He agreed to this and was put in contact with Portal.

Portal completed a fact-find and a financial questionnaire to gather information about Mr A's circumstances and objectives. These recorded that he was 44, single, in good health and employed full time. He lived in rented accommodation and his income was recorded as exceeding his outgoings by approximately £180 per month. It was noted that Mr A hoped to retire at age 60 and was interested in being able to leave his pension to his children in the event of his death. It was also stated that he wanted control of the pension and more flexibility. The fact-find recorded that maximising available tax-free cash ('TFC') was not important to him.

Mr A was asked, in the financial questionnaire, to specify his general attitude to risk in regard to investments on a scale of 1 – 7, with 1 indicating wanting to take no risk at all. It was recorded that Mr A selected 1. But in the fact find it was stated he had a 'balanced' attitude to risk and was 'happy to accept' investment risk.

Portal also gathered information about Mr A's DB scheme pension. It noted this had a cash equivalent transfer value ('CETV') of £33,380. At the normal scheme retirement age of 65 it was estimated Mr A would be entitled to an annual pension of £5,270 or tax-free cash ('TFC') of £24,141 and a reduced annual pension of £3,621.

On 17 November 2014, Portal advised Mr A to transfer his pension benefits into a SIPP. The suitability report briefly recapped Mr A's circumstances and said he had a 'Moderately Adventurous' attitude to risk. It said that Mr A had expressed that he felt the ability to draw a pension flexibly from age 55 would be useful, as would maximising the amount of available TFC.

Portal said that the critical yield – the growth rates required of a new pension to allow Mr A to purchase equivalent benefits to those he was due under his DB scheme – was 10.3% if he were to take a full pension at age 65 or 9.5% if he took TFC and a reduced pension at age 65. But it said that Mr A indicated he wasn't likely to take an annuity and the funds would remain invested. And the growth rate required of a flexible drawdown facility to match his existing benefits was 6.41%.

Portal said it felt a future assumed gross rate of return of 6.445% per annum was reasonable

– before accounting for charges – based on a model portfolio for an investor with Mr A's attitude to risk. And it said the portfolio would be designed to reduce exposure to risk as Mr A came to his expected retirement age, which Portal said was 65.

So, Portal recommended that Mr A transfer his benefits saying *"We believe a transfer is likely to result in increased pension benefits on a like-for-like basis with your Scheme."* It also said this would give Mr A ownership, control and flexibility, would enable Mr A to access TFC from age 55 and would provide alternative death benefits – so would meet his objectives. It also said, while it believed the DB scheme was currently financially secure, there was the possibility that future benefits could be reduced if "*governments fail to address structural funding problems that have been identified for these schemes*".

The report said Portal *"would recommend that you invest in the following fund asset classes"* and gave a percentage breakdown of how the portfolio should be apportioned. But it said another business, which I'll call 'Firm C', that was separate and independent to both Portal and the new pension provider, would contact Mr A to discuss the actual fund investments. And it said until that time, the pension fund would remain entirely invested in cash.

I understand that the SIPP was subsequently set up as per the recommendation and Mr A's benefits transferred from his DB scheme in July 2015. By which time the CETV had increased to £62,235. Firm C then provided recommendations regarding how the SIPP was invested, including that Mr A invest a significant sum in unregulated investments.

Firm C subsequently went into liquidation and Mr A appointed an alternative adviser. In 2019, Mr A made a claim to the Financial Services Compensation Scheme ('FSCS') in respect of the advice he'd been given by Firm C. I understand that claim was successful, and Mr A received redress.

Mr A then complained in 2021 to Portal about the suitability of its advice. He said he thought the advice to transfer and give up guaranteed pension benefits he'd have received through his DB scheme was unsuitable and not in his best interests.

Portal declined to look into Mr A's complaint as it said it felt it had been made outside of the time limits set for raising a complaint. It said it sent him a suitability report in November 2014 and his complaint had been raised more than six years after this. And Portal said Mr A should've had reasonable cause to question the advice he'd been given when Firm C went into liquidation in 2017 – more than three years before he complained.

Mr A referred his complaint to our service. Another Ombudsman considered whether we have jurisdiction to look into the complaint. And they decided the complaint had been made in time, so we can consider it.

An Investigator then looked into the merits of the complaint. She upheld the complaint and required Portal to pay compensation as well as £250 for the distress caused. In summary she felt Mr A was always likely to receive pension benefits of a lower overall value by transferring. And she didn't think there was another reason that outweighed this or made a transfer in Mr A's best interests. So, she thought Mr A should've been advised to leave his benefits where they were.

Portal did not respond to the Investigator's opinion. So, we have assumed Portal did not accept it. And the complaint has therefore been referred to me to make a final decision.

What I've decided – and why

As I mentioned, Portal previously said Mr A's complaint was brought too late for our Service to consider it. I don't intend to revisit that, given an Ombudsman has already given a decision explaining why they were satisfied Mr A brought this complaint in time, other than to say having reviewed the available information I agree with the decision reached by the previous Ombudsman. So, as I'm satisfied we can look into this complaint, I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of Portal's actions here.

PRIN 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*

PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the investigator.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Portal should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr A's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

Portal said in the suitability report it believed that a transfer was likely to result in increased pension benefits. But, as I'll explain, I don't agree with this statement.

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

The investment return (critical yield), quoted in the suitability report, required to match the DB scheme benefits at age 65 was 10.3% per year if Mr A drew a full pension or 9.5% per year if he took TFC and a reduced pension. This compares with the discount rate of 5.1% per year for 20 full years to retirement, as was the case here.

For further comparison, the regulator's upper projection rate at the time was 8% the middle projection rate 5%, and the lower projection rate 2%.

In the suitability report Portal said Mr A had a ‘moderately adventurous’ attitude to risk. But despite requests from our Investigator, Portal hasn’t provided copies of any risk profiling questionnaire completed at the time. The fact-find and financial questionnaire from the point of sale though included some questions about risk. And I don’t think these support the statement that Mr A had a moderately adventurous attitude to risk.

When asked on a scale of 1 to 7 to indicate what level of risk he’d be willing to take, Mr A indicated 1 – representing no risk at all. It was recorded, separately that Mr A had a ‘balanced’ attitude to risk and was “happy to accept” investment risk. But there was nothing to say how much risk he was in fact happy to accept. And in the same document it was noted that Mr A was only willing to tolerate a minimal loss and that any loss of 10% of his pension fund would have a significant impact on his standard of living. Given there was nothing recorded about Mr A holding any other pension provisions, this DB scheme appears to have represented the majority of his private pension arrangements. So, these statements about tolerance for loss seem reasonable. Mr A was at least 10 years from being able to draw any pension benefits. And so, there was time to achieve some growth. So, I don’t doubt that, after discussion with Portal, he indicated he was likely willing to take some risk. But on balance I think at most he was likely to have a cautious or balanced attitude to risk, rather than being moderately adventurous as Portal has suggested.

I’ve taken the critical yields and discount rates into account, along with the composition of assets in the discount rate, what I’ve said about Mr A’s attitude to risk and also the term to retirement. There would be little point in Mr A giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, based on the information used at the point Portal advised Mr A to transfer, I think he was always likely to receive benefits of a substantially lower overall value than the DB scheme at retirement, as a result of investing in line with his attitude to risk. And I think this would have in fact been the case even he did have ‘moderately adventurous’ attitude to risk.

I’m aware that the transfer value moved to the SIPP was greater than that which the suitability report was based on, meaning the critical yield was likely to have reduced. But I haven’t seen anything to suggest it fell to the point it could be reasonably expected to be achieved and exceeded – as would need to be the case for Mr A to improve his pension benefits. And in any event, the advice Portal gave was based on the lower CETV.

Portal said that the required growth rate of a drawdown pension to match the existing benefits was in fact 6.41%. And it estimated a return of 6.445% was achievable.

The regulator required the calculation of the critical yield when giving pension transfer advice as it illustrated the value of the DB scheme benefits. So, I think this is a more appropriate consideration. In any event though, the return rate Portal said was achievable is based on Mr A having a moderately adventurous attitude to risk. Which, as I’ve explained, I haven’t seen evidence to support being the case.

Also, as Portal will know, past performance, which I understand this estimate of what Portal thought was achievable is based on, is no guarantee for future performance and so I consider the discount rates and the regulator’s standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward.

And in any event, the rate of 6.445% which Portal said was achievable was before accounting for any charges. The information I've seen indicates the SIPP provider charged an annual management fee of 0.5% of the fund. And the business providing ongoing servicing, in this case Firm C, would also likely have applied a charge. So, when accounting for these charges, even if I felt looking at the required growth rate Portal has referenced was appropriate, or that Portal's projection was likely achievable, it still would've fallen short of the growth required to match the existing benefits. Meaning Mr A was always likely to end up with lower overall retirement benefits as a result of transferring.

So, from a financial viability perspective a transfer out of the DB scheme wasn't in Mr A's best interests. And I think Portal's statement that he was likely to receive increased pension benefits was incorrect and misleading.

Of course, financial viability isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.

Flexibility

It was noted that Mr A was potentially interested in retiring early – possibly around age 60. But Mr A has said he had no firm plans about this at the time. And, while obviously he was interested in retiring early if he could, this was not something that had been decided.

The suitability report said that Mr A had said he expected to retire at age 65. And the fact that no mention was made in the suitability report of the critical yields required for retirement at age 60, would also tend to support that this was more likely a 'nice to have'. Given Mr A was 44 at the time of the advice, I don't think a decision around this had been made. So, I don't think he needed flexibility in his pension arrangements at the time, for this purpose.

I also can't see that anything was recorded during the fact finding about his income needs in retirement. And no mention of this was made in the suitability report. So, I don't think there is enough evidence to suggest that he needed flexibility in order to achieve a set income need either.

The suitability report said Mr A felt maximising the amount of TFC available to him would be useful. But the fact-find specifically recorded that he felt this was not important (and this isn't the only discrepancy between the fact find and the suitability report). I haven't seen anything to suggest that Mr A needed or had any plans for TFC. And in any event, given his age, he wouldn't have been able to access this for over ten years anyway.

So, taking all of this into account, I don't think Mr A needed flexibility in terms of how his pension benefits could be accessed at the time of the advice. He doesn't appear to have had any concrete retirement plans. And, as it was over ten years before he could think about accessing his pension, I think it was too soon to make any kind of decision about transferring out of the DB scheme. So, I don't think it was a suitable recommendation for Mr A to give up his guaranteed benefits at the time. And if Mr A later had reason to transfer out of his DB scheme he could have done so closer to retirement.

Death benefits

Portal recorded that Mr A wanted death benefits for his son. And Mr A has confirmed that being able to pass the pension to his son was something he was interested in.

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr A. But whilst I appreciate death benefits are important to consumers, and Mr A might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr A about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think Portal explored to what extent Mr A was prepared to accept a lower retirement income in exchange for higher death benefits.

Mr A was unmarried, so the spouse's pension available through the DB scheme wasn't useful to him at that time. But he was still young. So, there was still the possibility he might've later married, and the existing death benefits could've then been useful.

More importantly though the lump sum death benefits the personal pension would provide was dependent on investment performance and would've also been reduced by any income Mr A drew in his lifetime. I haven't seen anything suggesting Mr A wasn't in good health, so there wasn't anything to suggest he was unlikely to reach at least his average life expectancy. By which time the income he'd have drawn would've meant the value of the pension was likely to have been significantly reduced. So, the pension was unlikely to provide the legacy Mr A may've thought.

In any event, Portal should not have encouraged Mr A to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Furthermore, if Mr A genuinely wanted to leave a legacy for his son, which didn't depend on investment returns or how much of his pension fund remained on his death, I think Portal should've instead explored life insurance. Mr A had disposable income to potentially pay for this and his age and the fact he was in good health suggests insurance was likely to be affordable. But I can't see that Portal explored this.

Overall, while Mr A might've been thinking about the pension potentially not benefitting his son in the event of his death when speaking to Portal, I don't think different death benefits available through a transfer to a SIPP justified the likely decrease of retirement benefits for him.

Concerns over financial stability of the DB scheme

There was nothing to suggest that the funding of Mr A's DB scheme was in a position such that Mr A should have genuinely been concerned about the security of his pension. And there is nothing to suggest he was concerned when contacting Portal. The suitability report also acknowledged as much. But it then went on to question the security of DB schemes in general and implied there was the possibility Mr A's pension could fail and see reduced benefits if *"governments fail to address structural funding problems*". I don't think this general observation was appropriate in the circumstances. And I don't think introducing this argument and doubt on Mr A's part represented his opinion and I'd argue it was misleading. And there weren't in my view any grounds to say transferring out of his DB scheme was in Mr A's interests based on this.

Suitability of investments

Portal said that Firm C would provide advice on how the SIPP was invested and the information I've seen indicates it did so. The FCA has been clear that in order to give suitable advice on a transfer of pension benefits, the advice has to include the suitability of the underlying investments. So arguably, without Portal having knowledge of how the portfolio would be invested, it couldn't reasonably have concluded that the transfer was in Mr A's interests. But ultimately, as I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr A, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr A should have been advised to remain in the DB scheme and so Firm C would not have had the opportunity to manage his funds if suitable advice had been given.

Summary

I don't doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr A. But Portal wasn't there to just transact what Mr A might have thought he wanted. The adviser's role was to really understand what Mr A needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr A was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr A was very likely to obtain lower retirement benefits and, for the reasons I've already explained, in my view there were no other particular reasons which would justify a transfer and outweigh this.

So, I think Portal should've advised Mr A to remain in his DB scheme.

Of course, I have to consider whether Mr A would've gone ahead anyway, against Portal's advice. And I've considered this carefully. But I'm not persuaded that Mr A would've insisted on transferring out of the DB scheme, against Portal's advice. Mr A appears to have been an inexperienced investor. I think he had a cautious, or at most balanced, attitude to risk. And he had a low capacity for loss - as this pension accounted for the majority of his retirement provision. I'm not persuaded that Mr A's thoughts in relation to the pension potentially not benefitting his son were of such concern that he would've insisted on the transfer knowing that a professional adviser, whose expertise he'd asked for, didn't think it was suitable for him or in his best interests. I think Portal's advice would've carried significant weight and if it had provided Mr A with clear advice against transferring out of the DB scheme, I think he would've accepted this.

In light of the above, I think Portal should compensate Mr A for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Should Portal be held entirely responsible for Mr A's losses?

As I've explained, I understand Firm C was responsible for providing advice in relation to how the SIPP was ultimately invested. So, I have considered whether I should apportion only part of the responsibility for compensating the loss to Portal. In the circumstances, though, I think it fair to make an award for the whole loss against Portal.

Portal should not have recommended Mr A transfer out of his DB scheme. And it was only as a result of Portal's involvement that Mr A transferred the funds held in his DB scheme to the SIPP. Portal's role was pivotal, since the eventual investments were fully reliant on the funds being transferred first. If that hadn't happened, Mr A couldn't have invested as he did. So, in my view, the entirety of Mr A's loss stems from Portal's unsuitable advice to transfer away from his DB scheme.

I'm aware that Mr A made a successful claim to the FSCS in respect of the advice Firm C gave him. So, I've thought about whether any award made against Portal should be limited by taking the payment the FSCS has already made to Mr A, which I understand totalled £15,711.14, into account.

The FSCS describes itself as a fund of last resort. And I understand it is usually unlikely it will pay out on claims where it is aware that another firm was involved in the transaction, and where it considers there is a reasonable prospect of the consumer making a recovery against that firm for the loss suffered. But whether to postpone payment of compensation (to enable the consumer to recover compensation from a third party) is a matter entirely for the FSCS.

In this case, the FSCS decided to award Mr A compensation before the complaint against Portal was brought or made to our service. I am aware that as a condition of accepting compensation from the FSCS, Mr A was asked to give to the FSCS an assignment of his rights to make a claim against third parties. This would have enabled the FSCS to make a claim in recovery of that compensation against those third parties and the PI insurer of Firm C. And Portal would be considered a third party.

In order for Mr A to make a complaint to this service about Portal, he needed to ask the FSCS for a re-assignment of those rights. I can see that Mr A has obtained that reassignment which contains, as a condition, the following requirement:

"The Claimant agrees that in respect of the Reassigned Rights the proceeds of the claim shall first be applied to repay an amount equal to the Compensation Sum to FSCS together with interest on the Compensation Sum from the date of receipt of the proceeds by the Claimant to the date of payment by the Claimant to FSCS at a daily rate equivalent to the Bank of England base rate from time to time (subject to a minimum rate of 0.1%), such payment to be made to FSCS within 14 days of receipt. The payment to FSCS shall be made after the deduction from the proceeds of the Claimant's reasonable legal costs incurred in pursuing a claim in respect of the Reassigned Rights."

So, although Mr A did receive compensation from the FSCS, as per the reassignment of rights agreement Mr A entered into with the FSCS, he has agreed to repay the compensation he received from the FSCS if he receives compensation from a third party (in this case Portal) relating to the same claim.

So, in my view:

- There is no real risk of Mr A benefiting from double recovery, as Mr A is contractually required to pay back to FSCS the full amount of the compensation it paid to him; and

- I have seen nothing to suggest that Mr A is unlikely to comply with that requirement in accordance with the deed of reassignment;

- If I did not direct Portal to pay compensation to Mr A for the full amount of his loss (in circumstances where I have determined it is responsible for 100% of that loss), he would nonetheless still be required to account to FSCS from the compensation he receives from Portal and would, in turn, be left out of pocket.

So, I think the fair and reasonable outcome is for Portal to pay Mr A compensation for the full amount of his loss.

Mr A's representative has said he is unhappy with any compensation being paid into the SIPP as he has lost all faith in Portal. And he is concerned with its financial viability based on a recent letter he received. So, he would like redress paying to him as a lump sum. But Portal is not the SIPP provider, so its status does not impact the status of the SIPP. And the aim of the recommendation I'm making is to put him back in the position he would've been in but for the advice – which would've been him having pension benefits rather than access to a lump sum now. There may be reasons that a lump sum payment is appropriate once redress is calculated – which are covered below. But I don't think it is fair to *require* all of the compensation to be paid as a lump sum.

Our Investigator recommended that Portal also pay Mr A £250 for the distress caused by the unsuitable advice. I don't doubt that Mr A has been caused distress and concern in relation to his retirement planning. And I'm conscious this wouldn't have happened but for the unsuitable advice. And so, in the circumstances, I think the award the Investigator recommended is fair.

Putting things right

A fair and reasonable outcome would be for the business to put Mr A, as far as possible, into the position he would now be in but for Portal's unsuitable advice. I consider Mr A would have most likely remained in his DB scheme if suitable advice had been given.

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and set out its proposals in a consultation document - CP22/15-calculating redress for non-compliant pension transfer advice.

In this consultation, the FCA said that it considers that the current redress methodology in Finalised Guidance (FG) 17/9 (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

A policy statement was published on 28 November 2022 which set out the new rules and guidance - https://www.fca.org.uk/publication/policy/ps22-13.pdf. The new rules will come into effect on 1 April 2023.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 for the time being. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with the new rules and guidance.

We've previously asked Mr A whether he preferred any redress to be calculated now in line with current guidance or to wait for the new guidance / rules to come into effect. He has chosen not to wait for any new guidance to come into effect to settle his complaint.

I am satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr A.

Portal must therefore undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

For clarity, I understand Mr A has not yet retired, and he has no plans to do so at present. So, compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out as at the date of my final decision and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr A's acceptance of the decision.

Portal may wish to contact the Department for Work and Pensions (DWP) to obtain Mr A's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr A's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr A's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr A as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement - presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

The payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Mr A within 90 days of the date Portal receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes Portal to pay Mr A.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above - and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

If the complaint hasn't been settled in full and final settlement by the time any new guidance or rules come into effect, I'd expect Portal to carry out a calculation in line with the updated rules and / or guidance in any event.

In addition to the calculation described above, Portal should pay Mr A £250 for the distress caused by the disruption to his retirement planning.

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

My final decision

<u>Determination and money award</u>: I uphold this complaint and require Portal Financial Services LLP to pay Mr A the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I would additionally require Portal Financial Services LLP to pay Mr A any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require Portal Financial Services LLP to pay Mr A any interest as set out above on the sum of £160,000.

<u>Recommendation</u>: If the compensation amount exceeds £160,000, I also recommend that Portal Financial Services LLP pays Mr A the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr A.

If Mr A accepts this decision, the money award becomes binding on Portal Financial Services LLP.

My recommendation would not be binding. Further, it's unlikely that Mr A can accept my decision and go to court to ask for the balance. Mr A may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 3 January 2023.

Ben Stoker
Ombudsman